

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HEALTH COALITION, INC.,)
)
Plaintiff,)
)
v.)
)
NEW ENGLAND ALLERGY ASTHMA)
IMMUNOLOGY & PRIMARY CARE,)
P.C. and THOMAS F. JOHNSON,)
Individually)
)
Defendants.)

Civil Action No. 05-cv-11816 MEL

**ORAL ARGUMENT
REQUESTED**

**MOTION OF HEALTH COALITION, INC.
FOR CIVIL CONTEMPT**

Plaintiff Health Coalition, Inc. (“HCI”) hereby moves the Court for an order adjudging the Defendants New England Allergy Asthma Immunology & Primary Care P.C. (“New England Allergy”) and Thomas F. Johnson (“Dr. Johnson”) (collectively “Defendants”) in violation of the Court’s Order dated January 17, 2007 and in civil contempt of Court. In support of this Motion, HCI relies upon the Memorandum of Law in Support of Motion of Health Coalition, Inc. for Civil Contempt and the Declaration of Brian M. Forbes dated March 7, 2007, all filed contemporaneously herewith.

Specifically, and for the reasons set forth in its supporting memorandum, HCI respectfully requests that the Court:

- (a) Find that the defendants’ have violated the Court’s Order dated January 17, 2007 and confirm that Order remains in full force and effect;
- (b) Adjudge the defendants to be in contempt of the Court;

(c) Order that defendants pay to HCI \$1000 per day for each day that defendants fail to comply with the January 17, 2007 Order (and the Settlement Agreement);

(d) Award HCI its costs, including its attorneys' fees, incurred in attempting to obtain compliance with Court's Order dated January 17, 2007, including but not limited to the costs and attorneys' fees associated with making this Motion;

(e) Upon application, award HCI its costs, including attorneys fees incurred in the future to ensure and achieve compliance; and

(e) Grant such other and further relief as the Court deems just and proper.

For the Court's convenience, a proposed Order is attached hereto as Exhibit A.

REQUEST FOR EXPEDITED ORAL ARGUMENT

In light of the defendants' continuing contemptuous conduct and the continued risk of prejudice to HCI, plaintiff respectfully requests that the Court hear expedited argument on this Motion.

LOCAL RULE 7.1(A)(2) CERTIFICATION

Counsel for plaintiff has conferred with defendants' counsel pursuant to Local Rule 7.1(A)(2) regarding the issues presented by this Motion, have attempted in good faith to resolve or narrow the issues, but counsel have been unable to reach agreement on the issues raised by this Motion.

Respectfully submitted,

HEALTH COALITION, INC.,

By its attorneys,

/s/ Brian M. Forbes

Jeffrey S. King (BBO # 559000)

jeffrey.king@klgates.com

Brian M. Forbes (BBO# 644787)

brian.m.forbes@klgates.com

Stacey L. Gorman (BBO# 655147)

stacey.gorman@klgates.com

KIRKPATRICK & LOCKHART

PRESTON GATES ELLIS LLP

State Street Financial Center

One Lincoln Street

Boston, MA 02111

Tele: (617) 261-3100

Fax: (617) 261-3175

Dated: March 7, 2007

CERTIFICATE OF SERVICE

I hereby certify that this document, filed on March 7, 2007 through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on March 7, 2007.

Peter J. Haley
Leslie F. Su
Gordon Haley LLP
101 Federal Street
Boston, MA 02110

William H. DiAdamo
DiAdamo Law Office, LLP
40 Appleton Way
Lawrence, MA 01840

/s/ Brian M. Forbes

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HEALTH COALITION, INC.,)
)
Plaintiff,)
)
v.)
)
NEW ENGLAND ALLERGY ASTHMA)
IMMUNOLOGY & PRIMARY CARE,)
P.C. and THOMAS F. JOHNSON,)
Individually)
)
Defendants.)

Civil Action No. 05-cv-11816 MEL

[Proposed] ORDER

HAVING CONSIDERED all relevant submissions in connection with Plaintiff Health Coalition, Inc.'s Motion for Civil Contempt, it is hereby ORDERED that:

- 1) Defendants New England Allergy Asthma Immunology & Primary Care, P.C. and Thomas F. Johnson have violated the Court's Order dated January 17, 2007 and confirms that Order remains in full force and effect;
- 2) Defendants New England Allergy Asthma Immunology & Primary Care, P.C. and Thomas F. Johnson are adjudged to be in contempt of the Court;
- 3) Defendants shall pay to Health Coalition, Inc. \$1000 per day for each day that defendants fail to comply with the January 17, 2007 Order (and the Settlement Agreement);
- 4) Upon submission by Health Coalition, Inc. to defendants, New England Allergy Asthma Immunology & Primary Care, P.C. and Thomas F. Johnson shall pay Health Coalition, Inc. for all costs and attorneys' fees incurring in attempting to obtain compliance with the

Court's Order dated January 17, 2007, including but not limited to all attorneys' fees and costs incurred in connection with the Motion for Civil Contempt; and

5) Upon application to the Court by Health Coalition, Inc. defendants New England Allergy Asthma Immunology & Primary Care, P.C. and Thomas F. Johnson shall pay Health Coalition, Inc. for all costs and attorneys' fees incurred associated in the future to ensure and achieve compliance.

IT IS SO ORDERED

Dated: _____, 2007

Judge Morris E. Lasker
United States District Court Judge